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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/768,728

01/29/2004

Moises Calderon

7953

34408 7590 05/22/2009
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EXAMINER

HOLMES, REX R

ART UNIT

PAPER NUMBER

3762

MAIL DATE

DELIVERY MODE

05/22/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/768,728</p>	<p>Applicant(s) CALDERON, MOISES</p>	
	<p>Examiner REX HOLMES</p>	<p>Art Unit 3762</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/George R Evanisko/
Primary Examiner, Art Unit 3762

Continuation of 11. does NOT place the application in condition for allowance because: The applicant argues that Pieronne fails to teach that the air purges are used to remove air during priming and that they are used only in conjunction with the input ports to remove air bubbles by injecting products such as heparine or protamine into the blood circuit. The examiner respectfully disagrees. Air purges by definition are used to remove air from closed systems. Since the airpurges are located within the closed system that is primed they inherently remove air bubbles from the system. The applicant points Column 2 line 47- Column 3, line 11 to back up there assumption that the air purges are used in conjunction with the input. It is noted that column 2 line 47 to column 3 line 11 goes through the closed loop system. The fact that the possible inputs (it is noted that they are not required, as noted in Col. 2 line 48 and the dashed lines representing them in the drawing) are listed near the air purges does not mean that they are used together. The air purges are in the system even if the inputs are not, and thus are used to remove air from the closed system.

The applicants next argue that Rawles fails to teach priming the shunt with the patients own blood. As stated in the previous office actions, the applicant has written the claim in an open ended "comprising" claim format and does not preclude the use of saline in addition to the patient's own blood to prime the system. Rawles clearly teaches that the patient's own blood is used to prime the system (Col. 9, ll. 5-14). It is further noted that even if the system is first filled with saline to remove the air bubbles and then filled with the patients blood before using the system, it is still primed with the blood before using. The blood is still pumped in the closed system to prime it before using and the fact that there is no air to be remove does not dismiss the fact that the reference reads on the claim. It is further noted that the claim says that "the blood is used to fill the shunt to remove air through open vents". Rawles teaches that the blood is filled in the shunt to prime it, Rawles further teaches vents to remove air from the priming system (Col. 7, ll. 20-29), MORE IMPORTANTLY, if there is still any air left in the system, the blood will fill the shunt to remove air through open vents (Applicant next argues that Pieronne in view of Rawles fails to teach priming the shunt with the patients own blood to remove air. The examiner respectfully disagrees. This is evidenced by the arguments above regarding Pieronne and Rawles.

The Applicant next argues that claim 20 is allowable for the same reason as claim 13. The examiner disagrees for the same reasons as above.